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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,191	12/16/2005	Masayuki Tsuchiya	1254-0300PUS1	3952
2292 7590 08/14/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER ROOKE, AGNES BEATA				
ART UNIT		PAPER NUMBER		
1656				
NOTIFICATION DATE		DELIVERY MODE		
08/14/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

### Office Action Summary

**Application No.**

10/561,191

**Applicant(s)**

TSUCHIYA ET AL.

**Examiner**

AGNES B. ROOKE

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 April 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 and 22-49 is/are pending in the application.  
4a) Of the above claim(s) 1-16 and 24-49 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 17-19, 22 and 23 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This NON-FINAL office action is in response to the paper file don 04/09/2008.  
The amendments to the claims are acknowledged.

#### ***Rejoinder of Claims***

Group XI of the Restriction requirement is rejoined because the claims address the same subject matter as the elected invention. Therefore, claims 17 and 18 will be examined.

#### ***Status of claims***

Claims 17-19 and 22-23 are pending and under consideration. Claims 1-18 and 24-49 are withdrawn. Claims 20-21 are cancelled.

#### ***Rejection Withdrawn***

The rejection of claims 19-23 under 35 USC 101 is withdrawn in view of the amendments and cancellation of claims 20-21.

The rejection of claims 19-23 under 35 USC 11, second paragraph, is withdrawn in view of the amendments and cancellation of claims 20-21 .

The rejection of claim 19-23 under 35 USC 102(b) is withdrawn in view of the cancellation of the claims 20-21 and amendments to the claims, where Luhn et al. do not teach Chinese hamster cell.

The rejection of claims 19 and 20-23 under 35 USC 103(a) is withdrawn in view of the cancellation of the claims 20-21 and amendments to the claims, where there is no motivation in Luhn et al. or Kao et al. in regards to suppression of expression of the fucose transported gene

***New Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 17-19 and 22-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Kanda et al. U.S. 2004/0110282 (filing date April 9, 2003).

Kanda et al. teach a cell in which activity of GDP-fucose protein is decreased. See Abstract. In paragraph [0391] they teach that any host cell can be used in the method of suppression of fucose transporter as long as it has a gene encoding GDP-fucose transporter (instant claim 17).

In paragraphs [0009-0011] they teach that a Chinese hamster ovary cell (CHO cell) is used (instant claims 19 and 22).

In paragraphs [0021], [0217] and [0284] they teach that a gene disruption technique that comprises targeting a gene encoding GDP-fucose (instant claim 19).

In paragraph [0036] they teach that RNA is introduced into the cell by using a vector. In paragraphs [0143] and [0286] they teach a target vector for homologous recombination or an RNA interference (RNAi) that targets GDP-fucose transporter where the gene disruption method may be any method that can disrupt the gene of the target enzyme (instant claims 18 and 23). In paragraphs [0368] and [0376] they teach that the expression vector or vector that is autonomously replicable in the host cell can be integrated into the chromosome, and that it comprises a promoter at such position that the designed RNAi gene can be transferred (instant claims 18 and 23).

Therefore, the claims are anticipated.

### ***Conclusion***

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Agnes Rooke whose telephone number is 571-272-2055. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathleen Kerr Bragdon can be reached on 571-272-0931. The fax phone number for the organization where this application or proceeding is assigned is 571-272-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have

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any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.

AR

/Kathleen Kerr Bragdon/

Supervisory Patent Examiner, Art Unit 1656